

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 24, 2010 appellant, then a 46-year-old letter carrier, filed a claim alleging that on August 2, 2010 she sustained a recurrence of a July 21, 2010 injury.² She stated that the July 21, 2010 injury caused a concussion and vertigo. Appellant explained that her concussion was not initially diagnosed. After she returned to work following the July injury, she was very shaky and fell five more times. On August 2, 2010 appellant felt dizzy while delivering her route and fell down causing injuries to her knee and left hand. On August 3, 2010 she fell again and aggravated her knee condition. Appellant stopped work on August 3, 2010 and returned to work on August 6, 2010.

On September 7, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish her claim and that the employing establishment controverted her claim due to insufficient medical evidence. It requested a comprehensive medical report from her treating physician, which included a description of symptoms, results of examinations and tests, medical diagnosis, treatment provided and a physician's opinion, with stated medical reasons, explaining the cause of her condition and whether her employment duties caused or contributed to her condition.

On September 14, 2010 OWCP adjudicated the claim as an occupational disease. It found that appellant did not sustain a recurrence because she did not allege a spontaneous worsening of a work-related condition, but alleged new work factors as the cause of her condition. Because appellant stated that she fell twice on two different days, she should have submitted an occupational disease claim.³

In unsigned July 21, 2010 discharge instructions, it was noted that appellant sustained a head injury, fractured finger and staple wound closure.

In an unsigned August 22, 2010 report, Dr. Matthew J. DeLuca, a Board-certified psychiatrist and neurologist, stated that on July 21, 2008 appellant fell down some steps at work, struck her head, injured her foot and fractured the third and fourth fingers of the left hand. Appellant stated that she had fallen down several more times since then and has suffered from persistent neck and back pain and some vertigo. Upon examination, Dr. DeLuca did not find any evidence of external cranial injury. Appellant's motor examination revealed 5/5 strength with normal tone and bulk. Dr. DeLuca opined that she suffered a cerebral concussion along with some post-traumatic vertigo. He recommended a magnetic resonance imaging (MRI) scan examination.

² Appellant's July 21, 2010 claim was accepted for closed fracture of the second finger, left and open wound of the second finger, left under OWCP File No. xxxxxx308. She alleged that she hit her head and fingers as she "went down stairs" while delivering mail.

³ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q) (2011). A recurrence of disability is defined as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. *Id.* at § 10.5(x) (2011).

In an August 25, 2010 MRI scan report, Dr. Howard Kessler, a Board-certified diagnostic radiologist, noted that on July 21, 2010 appellant sustained a head injury with persistent headache and dizziness and compared a prior August 4, 2010 computerized axial tomography (CT) scan study. The examination revealed normal ventricular, sulcal and cisternal spaces with no intracranial hemorrhage, mass lesion or extra-axial collection. Dr. Kessler also did not observe any areas of abnormal signal intensity within the brain. He concluded that there was no evidence of tumor, demyelination, infarct or subdural hematoma.

In a letter dated September 22, 2010, OWCP requested that Dr. DeLuca provide a statement explaining the events that occurred on August 2 and 3, 2010, a diagnosis of appellant's knee and head conditions and a rationalized statement explaining whether the alleged conditions were work related. No response was received.

In an August 10, 2010 prescription slip, Dr. Gary B. Kershner, a family practitioner, authorized appellant to return to work on August 16, 2010 with no restrictions.

By decision dated October 8, 2010, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that her knee or hand conditions were due to her employment activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence⁴ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which provides the physician's explanation as to the causal relationship between the employee's diagnosed condition and the specified employment factors

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

⁷ *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

or incident.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

It is an accepted principle of workers compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employees' own conduct. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty. OWCP accepted that on August 2 and 3, 2010 she fell down at work as alleged. The Board finds that the record does not contain sufficient medical evidence to establish that she sustained knee or hand conditions as a result of these events.

Appellant submitted medical reports from Dr. DeLuca, who noted that on July 21, 2008 she sustained injuries to her head, knee and hand after she fell down at work. The Board notes that her initial injury occurred on July 21, 2010, not 2008. Dr. DeLuca conducted an examination and opined that appellant sustained a concussion and post-traumatic vertigo. This report pertains to her July 21, 2010 claim and provides no probative opinion regarding the August 2 and 3, 2010 events. Similarly, in the August 25, 2010 MRI scan report, Dr. Kessler stated that he did not find any abnormal signal intensity within the brain nor evidence of any tumor, demyelination, infarct or subdural hematoma. He did not provide any discussion regarding the events of August 2 and 3, 2010 or the alleged injuries arising as a result.

As the medical evidence does not offer any opinion regarding the cause of appellant's alleged condition, it is of limited probative value.¹¹ These reports are insufficient to establish appellant's claim.

The other evidence of record, including Dr. Kershner's August 10, 2010 return to work slip and July 21, 2010 discharge instructions, are insufficient to establish appellant's claim as they do not provide any description of her August employment events or an opinion regarding causal relationship of her alleged hand and knee conditions. The evidence of record is void of any medical evidence to support these conditions were sustained in August 2010. Appellant has

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

¹⁰ *See Charles W. Downey*, 54 ECAB 313 (2003); *M.S.*, Docket No. 07-1082 (issued October 23, 2007).

¹¹ *A.D.*, 58 ECAB 149 (2006); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

failed to submit probative medical evidence explaining how she sustained any knee and hand conditions as a result of the August 2 and 3, 2010 work events.

On appeal, appellant contends that her falls on August 2 and 3, 2010 were caused by vertigo, which was a consequence of a concussion she sustained on July 21, 2010. The record does not substantiate that OWCP accepted appellant's July 21, 2010 claim for concussion or vertigo. Appellant's allegations regarding the conditions she sustained on July 21, 2010 would pertain to her July 21, 2010 claim, but do not substantively establish her claim for hand and knee injuries on August 2 and 3, 2010.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained hand and knee conditions in the performance of duty.¹²

¹² The Board notes that appellant submitted additional evidence following the October 8, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board